IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 06/11/2003

Coram

The Honourable Mr. B. SUBHASHAN REDDY, Chief Justice
and
The Honourable Mr. Justice K. GOVINDARAJAN

Writ Petition No. 18586 of 2003 and Writ Petition No. 20771 of 2003
and
W.P.M.P.Nos. 23221, 23222, 25866 & 25867 of 2003

R. Ganesan .. Petitioner in
W.P.No.18586/2003

V.K.Elango .. Petitioner in
W.P.No.20771/2003

-Vs-

1. The State of Tamil Nadu
rep. by its Chief Secretary
Fort.St.George,
Chennai.

2. The Secretary
Tamil Nadu Public Service Commission
Chennai - 600 002 .. Respondents in
both the petitions

Petitions filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Declaration for the reasons stated therein.

!For Petitioner in
W.P.No.18586/2003 .. Mr. Rajaram

For Petitioner in
W.P.No.20771/2003 .. Mr. R. Karuppan

^For Respondent 1 .. Mr. V. Raghupathy
Government Pleader

For Respondent2 .. Mr. Paul Vasanthakumar

:O R D E R

THE HON'BLE THE CHIEF JUSTICE

These two writ petitions relate to selection to the post of Civil Judges (Junior Division) in Tamil Nadu Judicial Service, which is governed by Tamil Nadu Judicial Service (Cadre and Recruitment Rules),1995 (hereinafter referred to as 'the Rules'). The constitutionality of Rule 5 of the above Rules is in question.

2. In both the cases, the complaint is with regard to fixation of the maximum age limit of 38 years. The petitioner in W.P. No.18586 of 2 003 belongs to Scheduled Caste community while in the latter writ petition W.P. No.20771 of 2003, the petitioner is a Vanniyakula Kshatriya, which is categorised as Most Backward Class.

3. The contention of Mr. R. Karuppan, learned counsel appearing for the MBC candidate as also Mr. Rajaram, learned counsel appearing for the Scheduled Caste candidate, is that the outer age limit should not have been fixed for the candidates belonging to the reserved categories. They also pointed out that when the notification was first issued for 31 candidates on 25.2.2003, it was correctly mentioned that the outer age limit is not applicable to the reserved categories and that in the latest notification dated 3.5.2003, the maximum outer age limit beyond 38 years is fixed with cut off date as 1.7.2003 and it is unconstitutional and illegal. Mr. R. Karuppan, learned counsel for the petitioner in W.P. No.20771 of 2003, has relied upon the judgments rendered by the Supreme Court in (i) STATE OF KERALA v. N.M. THOMAS (AIR 1976 SC 490), (ii) P.G. INSTITUTE OF MEDICAL EDUCATION AND RESEARCH V. FACULTY ASSOCIATION (AIR 1998 S.C. 1764), (iii) AJIT SINGH v. STATE OF PUNJAB (AIR 1999 S.C. 3471) and (iv) STATE OF BIHAR v. BAL MUKUND SHAH (AIR 2000 S.C. 1296).

4. The entire adjudication rests upon the interpretation of the constitutional provisions contained in Article 16 (4) and the related Articles viz., 14 and 15 (4) as every rule has to conform to the said constitutional provisions and the interpretation laid by the Supreme Court, which is the law of the land under Article 141 of Indian Constitution.

5. On the subject of reservation, there are plethora of precedents and it has been held by the Supreme Court in INDRA SAWHNEY v. UNION OF INDIA (AIR 1993 S.C. 477) that the State is entitled to provide reservation but the same shall not cross beyond 50% and an exception can be made only in rarest of rare cases. The State of Tamil Nadu has provided for 69% reservation by enacting Tamil Nadu Backward Classes, Scheduled Castes and Scheduled Tribes (Reservation of Seats in Educational Institutions and of Appointments or Posts in the Services under the State) Act, 1993 (T.N. Act 45 of 1994) but that is under challenge before the Supreme Court. The said case is still pending. We need not go into the details of the above reservation aspects including the quantum of reservation provided. We have to decide the only issue as to whether categorisation of outer age limit for reserved categories can be claimed as of right and whether the rules prescribing the

maximum outer age limit of 38 years with no relaxation to reserved candidates, is liable to be struck down as being unconstitutional.

6. When the first notification was issued on 25.2.2003, the number of vacancies mentioned was only 31 as against large number of vacancies to be filled up and when the issue came up, number of vacancies were specified with other directives pointing out the rule where the minimum and maximum age limits were prescribed and that is why in the later notification dated 3.5.2003, every defect was rectified. May be that is the reason why the constitutionality of that portion of the Rule 5 of the Rules prescribing outer age limit of 38 years for all, including the reserved categories, is assailed.

7. Rule 5 of the Rules reads,
"5. Method of appointment, Qualification and age. - In respect of each category of posts specified in column (1) of the Schedule below, the method of appointment and the qualifications shall be specified in the corresponding entries in columns (2) and (3) thereof:-

SCHEDULE

| Category | Method of Appointment | Qualifications |
|---|---|---|
| (1) | (2) | (3) |
| 1... | .. | .. |
| 2... | .. | .. |
| 3... | .. | .. |
| 4.CIVIL JUDGE (Junior Division/ Judicial Magistrate First Class) | By direct recruitment on the basis of written examination / and Viva voce Examination conducted by the Tamil Nadu Public Service Commission in accordance with the rules specified in the annexures to these rules. | 1. ..<br>2. ..<br>3. Must be attained the age of twenty-one years and must not have attained the age of thirty-eight years on the 1st July of the year in which selection for a appointment is made." |

8. As seen from the above, there is no relaxation with regard to age limit. But some concession was shown for the reserved categories in prescribing the minimum marks for selection. The minimum marks for selection are 40 marks for open competition, 35 marks for Backward Class, 32 marks for Most Backward Class and Denotified Community and 30 marks for Scheduled Castes and Scheduled Tribes.

9. The Government, in its wisdom, while framing the Rules, has thought that having regard to the circumstances in the State of Tamil Nadu, the relaxation of outer age limit for the post concerned is not necessary for any reserved community while providing concessions so far as minimum marks for selection is concerned. Now the question for consideration is whether there is any imposition on the State to waive the maximum age limit for the reserved categories. Strong reliance is placed by both the counsel on the decisions cited supra. But, in our considered view, those decisions do not help to strengthen their arguments and in fact, the ratio decidendi laid down in the above cases runs contra to the submissions made by the learned counsel for the petitioners.

10. In STATE OF KERALA v. N.M. THOMAS (cited (i) supra), the Kerala State and Subordinate Services Rules (1958) provided some concessions in favour of the S.C. & S.T. candidates and those Rules were challenged as being unconstitutional but they were held as constitutional by the Supreme Court. In so far as P.G. INSTITUTE OF MEDICAL EDUCATION & RESEARCH v. FACULTY ASSOCIATION (cited (ii) supra) is concerned, the point for consideration is whether the reservation can be provided for a single-post category. It was held in the negative that such a reservation cannot be made. Analysing Articles 14, 15 and 16 of the Indian Constitution and also referring to sev eral previous judgments, particularly the judgments rendered by the Constitutional Benches, including INDRA SAWNEY's case (supra), it was held in paragraph 33 that 'Article 15 (4) is an enabling provision like Article 16 (4) and the reservation under either provision should not exceed legitimate limits' and 'in making reservations for the backward classes, the State cannot ignore the fundamental rights of the rest of citizens.' ( emphasis is ours). In AJIT SINGH v. STATE OF PUNJAB (cited (iii) supra), a constitution Bench of the Supreme Court has emphatically held that reservation provisions contained in sub-Articles 4 and 4-A of Article 16 of the Constitution do not create any constitutional duty and there cannot be any Mandamus issued to provide for reservation or for relaxation. The decision in STATE OF BIHAR v. BAL MUKUND SHAH (cited (iv) supra) goes a step further in holding that the State cannot provide any reservation unless consented to by the High Court in the process of consultation provided in Article 234 of Indian Constitution.

11. Going by the above legal principles enunciated by the Apex Court, which is the law of the land under Article 141 of Indian Constitution, we do not see any merit in the contention that there cannot be any outer age limit fixed for reserved candidates. Hence, we do not see any constitutional or legal infirmity in Rule 5 of the Tamil Nadu Judicial Service (Cadre and Recruitment Rules), 1995.

12. In the result, both the writ petitions are dismissed. Consequently, all the connected W.P.M.Ps. are closed. No costs.

(B.S.R., CJ) (K.G., J)

pv/bh

LR Entry : Yes
Internet : Yes